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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,542	11/01/2000	Simon Love	10001112-1	1974

22878 7590 06/30/2004

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EXAMINER
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GEORGE, KEITH M

ART UNIT	PAPER NUMBER
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2663

8

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/703,542

Applicant(s)

LOVE ET AL.

Examiner

Keith M. George

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 2-9 and 13-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This application has been reassigned to Examiner Keith M. George, AU 2663.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hershey et al., U.S. Patent 5,793,753, hereinafter Hershey.
4. Hershey teaches a telecommunications network management observation and response system including a programmable probe operatively connected to a network device for monitoring data transfer activity on the network and collecting selected data relating to one or more relevant functions (column 2, lines 16-19 and figure 2) (system for monitoring a communications network having data streams that carry data packets between a plurality of nodes by way of physical connections). The network monitoring and management system in accordance with the present invention includes strategically located probes or arrays of probes (figure 2, 22a, 22b, 22c) (a plurality of measurement probes) (column 3, lines 28-30). Hershey also teaches that it is preferable that such probes be nonintrusive and passive (each probe for passively collecting the data packets) (column 1, line 52). Associated with the probes or probe arrays are interpreter workstations (computational units) (figure 2, 22a, 22b, 22c), which are

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programmable to communicate with one or more of the probes. The workstations permits the system manager to program the probes to collect network performance data, network configuration parameters, alarm condition data, network accounting data and data related to network security. The workstation interpreter processes the data received from the probes to provide the data to the system manager in an easily viewable format (computational unit for receiving collected data packets and producing a data stream characterization from the set) (column 3, lines 43-53). Moreover, the workstation interpreter can be used by the system manager to change or reset various network configuration parameters such as alarm set points (configuration processing unit for generating a system configuration for the communications network from the data stream characterization) (column 3, lines 53-56).

5. Referring to claims 10-12, Hershey teaches the system described in reference to claim 1 above and also teaches that the workstation interpreter includes software that evaluates parameters received from the network probe to provide a parameter value represented thereof (recording peripheral information and computing an array of values from the collected data packets). The interpreter software compares the parameter value to a reference value which is stored in a look-up table or other data storage method to determine whether the numerical value deviates from the reference value by more than a preselected threshold (compare data stream characterizations to find matching pairs) (column 3, lines 56-65).

***Allowable Subject Matter***

6. Claims 2-9 and 13-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to claim 1 filed 12 April 2004 have been fully considered but they are not persuasive.

8. On page 8 of the Response/Amendment, applicant argues that Hershey does not disclose data streams nor data packets carried by the data streams. In response, figure 2 is a schematic diagram showing a multi-technology network that incorporates a network management system in accordance with the present invention. Figure 2 clearly shows probes 22a, 22b and 22c for collecting data from devices in the various technologies that constitute the network. These technologies include Ethernet, ATM, Token Ring, SDH/SONET, all of which are data streams that contain packet data.

9. Applicant also argues on page 8 that Hershey does not teach generating a system configuration from the data stream characterizations. In response, Hershey has clearly taught that the workstation interpreter can be used by the system manager to change or reset various network configuration parameters. Clearly changing and resetting parameters is equivalent to the limitation of generating a system configuration as claimed.

10. Applicant goes on to argue on page 8 that applicant, acting as his/her own lexicographer, has clearly defined a "data stream characterization" to be "a set of data stream parameters

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derived from measurements” on a set of collected data packets, the data stream characterization representing “the network traffic at a specific point in the network”. And as such, a “viewable format” has no relationship to the data stream characterization. In response, while it may be possible that applicant has provided a definition of the term “data stream characterization”, the definition simply states that it is derived from measurements and provides no additional detail about what is done with the results. Hershey clearly uses the workstation interpreter to process data received from the probes, which is equivalent to the definition provided by the applicant. The fact that Hershey then takes that processed data and displays it in an easily viewable format is of no consequence to the limitations of the claim. Applicant then proceeds to discuss portions of the specification in relation to the “data stream characterization”. Applicant is reminded that although claims are read in light of the specification, limitations from the specification are not read into the claims.

11. Applicant argues on page 9 that Hershey does not teach generating a system configuration from the data stream characterization. As was clearly shown above, Hershey teaches the workstation interpreter can be used by the system manager to change or reset various network configuration parameters, which is clearly generating a system configuration by utilizing information obtained by the probes.

12. Applicant’s arguments, see pages 10-15 and 18-20, filed 12 April 2004, with respect to claims 2-9 and 13-20 have been fully considered and are persuasive. The rejections of claims 2-9 and 13-20 have been withdrawn.

13. Applicant’s arguments with respect to claims 10-12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith M. George whose telephone number is 703-305-6531. The examiner can normally be reached on M-Th 7:00-4:30, alternate F 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keith M. George  
25 June 2004



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